

Nassau County  
Office of Community Development



**HOME Investment Partnerships Program**  
**General Program Guide**



**Nassau County OCD**  
**HOME Investment Partnerships Program**  
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This Program Guide provides a general overview of the structure of the Nassau County HOME Program, as administered by Nassau County Office of Community Development ("OCD"). The Nassau County OCD is a qualified "Participating Jurisdiction" under the HOME Program, as defined at 24CFR 92.2. This General Program Guide is designed to acquaint prospective applicants with the basic features and requirements of the HOME Program to assist them in applying for Program funds. It is thus primarily an informational tool, and it does not attempt to provide a complete and exhaustive statement of all rules and requirements of the HOME Program. The application directions should be reviewed thoroughly for more details concerning additional criteria for specific project/program types.

The HOME Program is governed by the Federal regulations (the "Regulations") published at 24 CFR Part 92 "HOME Investment Partnerships Program". Prospective applicants should consult the Regulations and the Rules when this Guide does not provide sufficient information. In the event of any inconsistency between this Guide and the Regulations and the Rules, the Regulations and the Rules will control.

If you require additional information about the HOME Program or a copy of the HOME program regulations, please contact Kevin Crean, Deputy Director of the Nassau County OCD, at (516) 571-1915. This program guide includes a summary of the HOME program regulations but is not to be considered the actual HOME program regulations themselves.

# **General Program Guide**

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**Nassau County OCD**  
**HOME Investment Partnerships Program**  
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**I. INTRODUCTION**

The HOME Program was created under Title II (the HOME Investment Partnerships Act) of the National Affordable Housing Act of 1990. The general purposes of HOME include:

- To expand the supply of decent and affordable housing, particularly rental housing, for low and very low-income persons.
- To strengthen the abilities of state and local governments to design and implement strategies for achieving adequate supplies of decent, affordable housing.
- To extend and strengthen partnerships among all levels of government and the private sector, including for-profit and nonprofit organizations, in the production and operation of affordable housing.

The HOME Program is not a categorical housing program requiring a specific housing activity. Instead, the HOME Program provides states and local government's flexibility to decide what kind of housing assistance, or mix of housing assistance, is most appropriate to address local housing needs.

Part of the purpose of the Program is to encourage state and local governments to use HOME funds efficiently and to encourage partnerships between public and private entities. Housing initiatives that leverage HOME funds with other funds are strongly encouraged and will be given priority.

**II. ELIGIBLE APPLICANTS**

Nassau County OCD will accept applications from non-profit and for-profit entities, units of local government, housing authorities, and public agencies. Consult the application material for each HOME Program activity. For the purposes of this document, "sponsor" includes all of the above eligible applicants.

**III. APPLICATION PROCEDURE**

Applications for HOME funds are available from Nassau County OCD. **Applications must be received by on the announced date the first week of April at the address noted below. Applications received after the April date may be considered for funding under the County's rolling application review period, if funding is available.**

**A. Review Process**

When the program sponsor submits an application to Nassau County OCD, the OCD staff reviews the request to determine its feasibility. Feasibility will be determined in accordance with the HOME regulations and Nassau County OCD's review and ranking criteria and policies. Upon receipt of a complete application, the Nassau County OCD staff will notify the sponsor of the timing required for the review.

The Nassau County OCD staff will bring all complete applications to its Grants Committee for consideration. Upon approval by the Grants Committee, a Conditional Commitment Letter will be sent to the sponsor which details the terms and conditions of the proposed project. The Conditional Commitment Letter details the terms and conditions of the proposed project as approved by the Committee. The

primary condition of this approval will be the approval of all other funding sources. A secondary condition is a satisfactory environmental review. **Funds will not be disbursed, and a project may not begin, until the environmental review has been completed.**

Once all other funding has been secured, and other conditions listed in the Conditional Commitment letter have been satisfied, a funding contract will be issued. After contract approval and execution by the County, a "closing" can take place. A closing takes place when all legal documents between the sponsor and Nassau County OCD have been executed. The legal documents that pertain to HOME projects include some or all of the following: Affordable Home Program Contract, Mortgage, Promissory Note, and a Disclosure Statement. Draft Copies of these documents are available upon request.

No funds may be disbursed until after the closing takes place. When funds are disbursed, **original** copies of payment requests are required.

## B. Review Criteria

In evaluating applications for funding, Nassau County OCD will consider the following general factors:

1. **Program Type.** The extent to which the application addresses the priorities for housing as established in Nassau County's Consolidated Plan. The extent to which the application meets the Nassau County OCD approved use of funds as outlined in this Program Guide and in the application materials for each application type.
2. **Ability and Preparedness of Applicant and Project or Program:**
  - a. **Sponsor's capacity** Ability of the sponsor to implement the housing proposal. Nassau County OCD will look at the experience and success of the development team, including the past performance of the applicant in completing housing activities. Refer to the application for specific submission requirements regarding the experience of the development team.
  - b. **Timing and readiness to proceed** Priority will be given to projects that are ready to proceed at the time the application is submitted. Sponsors' ability to meet the time frames established by Nassau County OCD will be considered. Other factors which indicate readiness to proceed include full development of program or project concept at time of application, site control, commitment of other funds and service providers, completed drawings, identification of the population to be served, appropriate zoning, no adverse environmental impact, and community approval of the project.
3. **Projected Impact of the Program** including the following elements:
  - a. **Relocation costs** Projects, that do not involve relocation of existing occupants, or tenants are strongly preferred to those that involve relocation. Projects with excessive relocation costs or that economically displace tenants by raising rents beyond their ability to pay, may not be funded. Please *carefully review* the relocation section of this program guide.
  - b. **Benefit to low-income families and individuals** Applications for proposals, which serve the greatest percentage of very low-income persons and the greatest number of low- and very low-income persons per HOME dollar invested will be favored. Projects, which do not increase the number of units for low- and very low-income households or do not materially change their living conditions, but are essentially transfer of ownership, will not

- be eligible for funding.
  - c. **Supportive services** Applications that include commitments for services for a targeted population associated with the housing proposal (e.g. elderly, mentally ill, etc.), will be given a preference.
- 4. Financing Plan of the Program including the following elements:
  - a. **Commitment of other funds** Nassau County OCD will look for: the amount of private resources to be leveraged by the proposal, other public funding to be committed to the activity, and the availability of matching funds. Proposals, which leverage HOME funds with private financing, are strongly preferred. Nassau County OCD will **require** all applications to provide evidence of matching funds or contributions in an amount of at least 25% of HOME funds requested. See Section IX of this Guide for sources of funds that qualify as match. Priority will be given to those developments that provide greater than the minimum 25% Match.
  - b. **Form of investment** HOME assistance from Nassau County OCD may be in the form of **loans** or grants. Loan terms are negotiated with the applicant. Should the project not be able to support debt, the assistance may be provided in the form of a grant.
  - c. **Feasibility of the project over time** Extent to which a project remains feasible using various underwriting scenarios and circumstances.
  - d. **Cost per unit and cost per square foot of the project** Costs will be reviewed for reasonableness. Consideration will be given to extra costs of a project that include supportive services, which address the needs of tenants with special needs.
  - e. **Collateral and mortgage position** Nassau County OCD's collateral and mortgage position must be clearly identified. Nassau County OCD reserves the right to deny the award of funding if it deems collateral or mortgage position to be unsatisfactory.
  - f. **Other financing considerations include:** The amount of HOME funds requested, the terms of the HOME financing and other financing sources, the secured position of the HOME funds, the equity contribution of the Applicant, and the amount and appropriateness of non-construction costs.
  - g. **Cash Flow versus Amortized Loans** Financing of the project can be done by an amortized loan or a cash flow loan.
    - ◆ A cash flow loan is defined as the income of a project (rental income, interest income, rental assistance, etc.) minus the expenses of a project (utilities, taxes, insurance, maintenance, management, administration, etc.). Money placed into operational and replacement reserves is also subtracted from the income. Then a percent (generally 50%) of this available cash is taken out in order to make payments on the loan.
    - ◆ An amortized loan is defined as a loan on the property where a certain payment amount is made each year, regardless of cash flow.
- 5. Locational Factors include the following elements:
  - a. **Community support of the proposal** Applicant should supply evidence of outreach, involvement and cooperative intent with residents or organizations representative of the residents within the target neighborhood(s). Sponsor must provide at least *two* letters of support for the development. One letter must come from the chief elected official of the

- municipality in which the development is to be located.
  - b. **Documented need** for the proposed housing in the community, including the results of any site and market studies conducted, and a demonstration of consistency with the Consolidated Plan (a copy of the plan is available for public viewing at the OCD office).
- 6. Physical Characteristics of the housing units include the following elements:
  - a. Adherence to applicable requirements for accessibility or adaptability of units for physically disabled individuals.
  - b. Absence of environmental hazards. Projects that are free from actual or potential environmental hazards will be favored.
- 7. Organization of the Project Sponsor:
 

Nonprofit sponsors will be encouraged to participate in the HOME Program. Community Housing Development Organizations ("CHDOs") proposing to undertake activities eligible under the CHDO set-aside will be given a priority. Please review the CHDO section of this program guide for more details.

#### IV. TYPES OF HOME PROGRAM ACTIVITIES

Uses of HOME Funds - HOME funds may be used for acquisition, rehabilitation, and new construction of multi-family units and acquisition and rehabilitation of single-family rental units. Project costs eligible for HOME funding are limited to the following:

- 1. development hard costs,
- 2. refinancing costs,
- 3. acquisition costs,
- 4. related soft costs,
- 5. relocation costs, and
- 6. costs relating to payment of loans.

##### A. Rental

The HOME-assisted units in a rental housing project must be occupied only by households that are eligible as low-income families and must meet the following requirements to qualify as affordable housing. The affordability requirements also apply to the HOME-assisted non-owner-occupied units in single-family housing purchased with HOME funds in accordance with 92.254

- 1. **Rent Limitation.** HUD provides the following maximum HOME rent limits. The maximum HOME rents are the lesser of:
  - a. The fair market rent of existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or
  - b. A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as described by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions (see Attachments A&B)

2. **Additional Rent Limitations.** In rental projects with five or more HOME-assisted rental units, twenty (20%) percent of the HOME-assisted units must be occupied by very low-income families and meet one of the following rent requirements:
  - a. The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits, which include average occupancy per unit and adjusted income assumptions. However, if the rent determination under the paragraph is higher than the applicable rent under (a) of this section, then the maximum rent for units under this paragraph is that calculated under paragraph (a).
  - b. The rent does not exceed 30 percent of the family's adjusted income. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e. tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.
3. **Initial rent schedule and utility allowances.** The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone). The participating jurisdiction must review and approve rents proposed by the owner for units subject to the maximum rent limitations in paragraphs (a) or (b) of this section. For all units subject to the maximum rent limitations in paragraphs (a) or (b) of this section for which the tenant is paying utilities and services, the participating jurisdiction must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services.
4. **Nondiscrimination against rental assistance subsidy holders.** The owner cannot refuse to lease HOME-assisted units to a certificate or voucher holder under 24 CFR part 982--Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.
5. **Periods of Affordability.** The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the table (on the following page), beginning after project completion. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. They must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

NOTE: Please refer to the HOME Program Regulations (available from Nassau County OCD upon request) for the following:

- ◆ Subsequent rents during the affordability period;
- ◆ Adjustment of HOME rent limits for a particular project;



- ◆ Tenant income;
- ◆ Over-income tenants;
- ◆ Fixed and floating HOME units.

Each Applicant should be aware of the market conditions of the area in which projects are located. A waiver of rents may be requested of OCD and HUD.

Affordability Period - HOME-assisted rental units in a project must adhere to the rent and income limits described in Attachments A&B for the following terms:

Type of Activity	Average HOME funds per unit	Affordability Term
Rehabilitation	Under \$15,000	5 years
Rehabilitation	\$15,000 - \$40,000	10 years
Rehabilitation	Over \$40,000	15 years
New Construction	Any Amount	20 years

#### B. Single-Family Owner-Occupied Housing

HOME funds may be used for acquisition, rehabilitation and new construction of owner-occupied housing units. All HOME funds used for owner-occupied housing must benefit existing low-income homeowners whose household incomes are below 80% of the area median income. In addition:

- ◆ The assisted housing must be the owner's principal residence;
- ◆ The appraised value of the property after rehabilitation must be less than HUD's Section 203(b) mortgage limit for the type of single-family housing for the area; (Area maximum appraised values are available with the HOME Program Application.)
- ◆ If the house is sold within the recapture period HOME funds will be paid back to the Nassau County OCD; and
- ◆ The recapture period is related to the level of funding on a per house basis.
- ◆ See chart below for the Affordability Period pertaining to single-family owner-occupied housing.

Homeownership Assistance HOME Amount Per-Unit	Minimum Period of Affordability in Years
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15

- 1) Low HOME Rents are based on 30% of 50% of the area median income.
- 2) High HOME Rents are based on the lower of Section 8 Fair Market Rents or 30% of 65% of area median income.

## V. NEW CONSTRUCTION

New construction projects are allowable. Rental new construction projects must meet HUD's Site and Neighborhood Standards in order to be eligible for funding consideration.

Nassau County OCD will only consider new construction projects through the HOME Program if other public or private sources of funds are part of the submitted application. HOME funds cannot be the only source of financing. There must be a clearly documented need for new construction in the area.

## VI. PROHIBITED ACTIVITIES

Activities **prohibited** under the HOME Program include:

- ◆ Public housing modernization, maintenance and operation, or new construction;
- ◆ Tenant subsidies for certain special purposes mandated under Section 8;
- ◆ Providing nonfederal matching funds for any other federal programs;
- ◆ Annual Contributions Contracts;
- ◆ Activities under the Low-Income Housing Preservation Acts of 1987 and 1990;
- ◆ Emergency and temporary housing;
- ◆ Funding operating deficit reserves or replacement reserves (Note: for new construction of substantial rehabilitation projects, the cost of funding an initial operating deficit reserve to meet any shortfall in project income during rent-up, which will be used to pay: operating expenses, replacement reserve payments, and debt service, may be an eligible expense in some circumstances);
- ◆ Providing assistance to properties receiving Rental Rehabilitation Program funds since the requirements of these programs are incomparable;
- ◆ Projects previously assisted with HOME funds; and
- ◆ Emergency repairs, if property is not brought up to housing code standards.

## VII. OTHER REQUIREMENTS

### A. Maximum Per-Unit Subsidies

To ensure that units developed with HOME funds are non-luxury, affordable housing units, HUD has established a maximum per-unit HOME subsidy on a market-by-market basis, adjusted for unit size, which will be updated and adjusted for inflation annually.

(See Attachment D for Area Maximum per-unit HOME subsidy limits.)

### B. Subsidy Guidelines

In order to maximize leveraging of other funds, Nassau County OCD has established guidelines for maximum assistance per unit, as follows

<b>Affordability Threshold</b>	<b>Maximum Assistance Per Unit Guideline</b>
For units priced affordable to individuals and families between 50% and 80% of Area Median Income	\$35,000
For units priced affordable to individuals and families below 50% of AMI	\$50,000

### C. Property Standards

1. Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion, except as provided in paragraph (2)(b) of this section. The participating jurisdiction must have written standards for rehabilitation that ensure that HOME-assisted housing is decent, safe, and sanitary. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable: one of three model codes (Uniform Building Code (ICBO), National Building Code (BOCA), Standard Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926. To avoid duplicative inspections when FHA financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. Plans and Specifications must be submitted to Nassau County OCD so that Model Energy Code compliance can be certified. Other building standards must be documented to Nassau County OCD by a letter from a licensed, qualified architect upon construction completion.

All other HOME-assisted housing must meet all applicable state and local housing quality standards and code requirements, and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401

The housing must meet the accessibility requirements in the regulations referenced in 24 CFR 5.105(a) which implement the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

2. The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest:
  - a. Before the transfer of the homeownership interest, the participating jurisdiction must:
    - (i) Inspect the housing for any defects that pose a danger to health; and
    - (ii) Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.
  - b. The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer.
  - c. The housing must meet the property standards in paragraph (C) (1) of this section not later than 2 years after transfer of the ownership interest.
3. An owner of rental housing assisted with HOME funds must maintain the housing in compliance with all applicable State and local housing quality standards and code requirements

and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

4. All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the housing quality standards in 24 CFR 982.401.

#### D. Maximum Property Value

HOME Program regulations prohibit assisting a single-family residential dwelling with an appraised value in excess of HUD's Section 203(b) mortgage limit for the type of single-family housing for the area. In 2006, the Section 203(b) mortgage limits for single-family housing in Nassau County are as follows:

Nassau County 203 (b) Mortgage Limits				
One-Family	Two-Family	Three-Family	Four-Family	Last Revised
\$362,790	\$464,449	\$561,411	\$697,696	01/01/2006

#### E. Displacement, Relocation and Acquisition

Potential applicants must carefully consider how their rental proposal may be impacted by the Uniform Relocation Act ("URA") before applying for HOME funds or obtaining site control of a given property. In all cases in which a proposed rental development site is either partially or fully occupied, an Existing Tenant Profile form must be completed and submitted concurrently with the application. Failure to submit this information with the application may result in the proposal being determined ineligible. The effective date for relocation assistance will be the earlier of: the date of application for HOME funds, or the date the sponsor obtains site control. If not taken into account, relocation expenses could render an otherwise viable project infeasible.

Relocation benefits are triggered under the URA when a resident is displaced permanently or temporarily. Some examples of situations, which would be considered displacement, are:

- ◆ Involuntary Moves. If a tenant must move in response to a notice to vacate premises because of impending acquisition and rehabilitation, or demolition;
- ◆ Non-Renewal of Lease. If a move results from the owner's refusal to renew an expiring lease;
- ◆ Failure to Inform Tenant in Timely Manner of the impact of the project on him/her; and
- ◆ Economic Displacement caused by the changing rental structure of the proposed project.

Please note, this is not an exhaustive list of displacement situations.

Residential and business tenants of developments assisted with HOME funds who are required to move temporarily must be provided reimbursement for relocation to suitable, decent, safe and sanitary housing and given advance written notice of the date and duration of temporary relocation. Such temporarily relocated residents must be provided a reasonable opportunity to lease and occupy a suitable and affordable unit in the rehabilitated building upon completion of the project. URA requirements may be applicable in many instances when HOME funds are used. Participants must comply with Nassau County OCD procedures and federal regulations regarding displacement and relocation of households affected by projects using HOME funds.

If any of the units in the proposed project site are occupied, or if you suspect for any reason that your project may be subject to the URA, **STOP AND CONTACT NASSAU COUNTY OCD TO LEARN ABOUT RELOCATION BEFORE PROCEEDING.** If Nassau County OCD discovers there are relocation issues after the submission of an application, the Nassau County OCD reserves the right to disqualify the application and withdraw their funding commitment.

(For details see: the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (49 CFR Part 24), and the Fair Housing Act)

F. Other Requirements Applicable to HOME Program

Projects, which are funded with HOME funds, are subject to the following requirements in the applicable federal regulations:

1. Equal Opportunity and Fair Housing

No person will be denied the benefits of, or be subjected to discrimination under any program or activity funded by HOME on the grounds of race, color, national origin, religion, sex, age, family status, or handicap.

Opportunities for training and employment related to any project assisted with HOME funds should be given to low income persons in the local area, to the greatest extent possible.

Contracts for work performed in connection with HOME projects should be awarded to businesses located in the same metropolitan area as the project, to the greatest extent possible.

Contracts for the procurement of property and services awarded by recipients and subrecipients shall be awarded to minority business enterprises and women business enterprises to the greatest extent possible.

(For detailed requirements see: the Fair Housing Act and implementing regulations at 24 CFR part 100, Executive Order 11063 as amended-Equal Opportunity in Housing and implementing regulations at 24 CFR part 107, title VI of the Civil Rights Act of 1964 and implementing regulations at 24 CFR part 1, the Age Discrimination Act and implementing regulations at 24 CFR part 145, Rehabilitation Act and implementing regulations at 24 CFR part 8, Executive Order 11246-Equal Employment Opportunity and implementing regulations at 41 CFR Chapter 60. Section 3 of the Housing and Urban Development Act of 1968, Executive Order 11625-Minority Business Enterprise, and Executive Order 12138-Women Business Enterprise)

2. Affirmative Marketing

Participants must comply with affirmative marketing procedures and requirements for multifamily projects with 5 or more HOME-assisted housing units. Nassau County OCD will evaluate proposals involving single-family projects with 5 or more HOME-assisted units to determine whether affirmative marketing efforts are appropriate. Such efforts include procedures to be used by owners to inform and solicit applications from persons in the housing market area not likely to apply for housing without special outreach. An Affirmative Marketing Plan must be submitted to and approved by Nassau County OCD before any tenants sign a lease. (Part of this rental housing application packet)

3. Environmental Review

Participants must comply with HUD's policies regarding the responsibility of conducting environmental reviews on proposed development sites. (Site and neighborhood standards apply to new construction rental housing only). **An environmental review must be completed before a Notice to Proceed will be issued from MCCD.**

(For details see: the National Environmental Policy Act and the regulations found in 24 CFR Part 50 and 24 CFR Part 58)

4. Labor

Any contract for rehabilitation or new construction of twelve (12) or more HOME assisted units must require the contractor to pay federal prevailing wage rates. For details see: the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Federal Labor Standards Compliance in Housing. See attachments E, F, & G.

5. Section 3

All contracts for rehabilitation and/or new construction must abide by the requirements of Section 3, which requires that efforts be extended to hire low-income persons and businesses located in the project area to work on the project. See attachment H.

6. Lead-based Paint

Any housing which has been assisted in whole or in part with HOME funds must comply with the requirements of the Lead-Based Paint Poisoning Prevention Act and the regulations found in 24 CFR Part 35 and to Title X regulations

7. Debarment and Suspension

All contractors used in connection with HOME-funded projects must be certified to not be presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excused from participation from any federally assisted construction projects.

(For details see: 24 CFR Part 24 Appendix B, Executive Order 12549)

8. Flood Insurance

HOME funds may not be used for acquisition, new construction, or rehabilitation of a project located in an area identified by Federal Emergency Management Agency as having special flood hazards unless the community in which the project is to be located participates in the National Flood Insurance Program or other flood insurance of similar coverage is obtained.

(For details see: the Flood and Disaster Protection Act of 1973 and the regulations found at 44 CFR Parts 59 through 79.)

VIII. RECORD KEEPING

Each sponsor of a HOME-assisted project will be required to maintain certain records, which will be subject to annual review, by the Nassau County OCD staff upon reasonable notice. The types of records include, but are not limited to:

- A. Records and Nassau County OCD-approved certifications which evidence compliance with income targeting requirements and rent levels throughout the applicable period of affordability;
- B. Records and Nassau County OCD-approved certifications, which demonstrate that HOME-financed units meet the applicable property standards;
- C. For rental projects, Nassau County OCD-approved leases, and low income tenant certifications as well as affirmative marketing and tenant-selection plans;
- D. For homeownership proposals, records and Nassau County OCD-approved certifications which evidence the compliance with income eligibility provisions and the appraised value of the property after rehabilitation, or the initial purchase price, as applicable;
- E. Records which indicate whether the project is mixed-income, mixed-use or both and that the project complies with the eligibility provisions for mixed-income and mixed-use projects;
- F. Documentation of actions undertaken to meet the equal opportunity and fair housing regulations;
- G. Records indicating compliance with the affirmative marketing procedures and approval of the Affirmative Marketing Plan by Nassau County OCD.
- H. Records which indicate compliance with the Uniform Relocation Act and the relocation procedures prescribed by Nassau County OCD. This includes project occupancy lists identifying the name and address of all persons occupying the real property on the date the application was submitted of the applicant had site control and the application is later approved, or the date the Nassau County OCD approved the site, if the applicant did not have site control at the time of application, and the name and address of all persons occupying the property upon project completion;
- I. Records and Nassau County OCD-approved certifications indicating compliance with the Davis-Bacon Act including contract provisions and payroll records;
- J. Records and Nassau County OCD-approved certifications concerning compliance with Section 3;
- K. Records and Nassau County OCD-approved certifications concerning lead-based paint testing and abatement activities;
- L. Records of certifications concerning debarment and suspension;
- M. Records and certifications demonstrating compliance with flood insurance requirements; and
- N. Records and certifications listing Nassau County OCD as additional insured on all official insurance documents.

#### IX. MATCHING FUNDS REQUIREMENTS

Affordable housing developments assisted with HOME funds must include a nonfederal matching source of financing.

##### A. Match Amounts for HOME Funds

The required "match" contribution is a flat 25% of HOME funds requested for all types of activities. The following table presents examples of the required matching funds contribution based on several different

levels of HOME financing.

Amount of HOME Funds Invested	Amount of Match Contribution
\$10,000	\$2,500
\$350,000	\$87,500
\$500,000	\$125,000

Matching funds must be used for HOME-assisted projects. Requirements are calculated on a project-by-project basis. Nassau County OCD will give a priority to proposals, which exceed the required source of nonfederal match, all other things being equal.

#### B. Sources

As a general rule of thumb, permanent, non-federal sources of funds, that are non-refundable contributions from State or local government, or private sources, will be eligible to qualify as a matching contribution. The following table provides many examples of acceptable and unacceptable sources of matching funds.

ACCEPTABLE SOURCES OF MATCH	UNACCEPTABLE SOURCES- OF MATCH
<ul style="list-style-type: none"> <li>-Local or State general revenues</li> <li>-Housing trust funds</li> <li>-Foundations, donations</li> <li>-Value of waived taxes, fees, or charges</li> <li>-Appraisal value of land or real property not acquired with federal funds</li> <li>-Difference between appraised value and acquisition cost, if property is acquired with Federal funds</li> <li>-Grant equivalent of below market interest rate loans to the project</li> <li>-The cost of investments, not made with federal resources, in on-and off-site infrastructure that is directly required for the affordable housing assisted with HOME funds Federal Home Loan Bank grants</li> <li>-Value of donated materials or labor</li> <li>-Sweat equity</li> <li>-Non-federally funded supportive services</li> </ul>	<ul style="list-style-type: none"> <li>-All federal funds, including: CDBG funds, Rental Rehabilitation Program, Homeless housing programs, Weatherization, etc.</li> <li>-Value attributable to federal tax credits</li> <li>-The interest rate subsidy attributable to the federal tax-exemption on financing</li> <li>-Expenditures on program administration</li> </ul>

All applications for HOME funds should include anticipated sources of nonfederal matching funds.

### X. COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS

A Community Housing Development Organization ("CHDO") is a nonprofit organization that meets special HUD-established criteria under the HOME Program.

#### A. Funding

1. **CHDO Set-Aside.** Nassau County OCD will reserve at least 15% of Nassau County OCD's total HOME Program allocation each year for housing to be developed, sponsored or owned by CHDOs. These funds will be distributed on a competitive basis according to the priorities stated herein. More funds may be made available to CHDOs depending on competition and



assessed need once eligible CHDOs have been identified.

2. **Predevelopment Loans Set-Aside.** Up to 10% of the CHDO set-aside may be made available for project-specific site control or seed money loans.

B. Definition

In order to qualify as a CHDO under the HOME Program, a nonprofit must meet the following requirements:

1. Is organized under State or local laws;
2. Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
3. Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization (CHDO) may be sponsored or created by a for-profit entity, but:
  - a. The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm;
  - b. The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members; and
  - c. The community housing development organization (CHDO) must be free to contract for goods and services from vendors of its own choosing;
4. Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986;
5. Does not include a public body (including the participating jurisdiction). An organization that is State or locally chartered may qualify as a community housing development organization. However, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of the participating jurisdiction or State recipient. Board members appointed by the State or local government may not appoint the remaining two-thirds of the board members;
6. Has standards of financial accountability that conform to 24 CFR 84.21, Standards for Financial Management Systems;
7. Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;
8. Maintains accountability to low-income community residents by:
  - a. Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, a community may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village,

county, or multi-county area (but not the entire State); and

- b. Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;
- 9. Has a demonstrated capacity for carrying out activities assisted with HOME funds. An organization may satisfy this requirement by hiring experienced key staff members who have successfully completed similar projects, or a consultant with the same type of experience and a plan to train appropriate key staff members of the organization; and
  - 10. Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

#### C. CHDO Eligible Activities

Only the following activities qualify towards the 15% CHDO set-aside:

- 1. Acquisition and/or rehabilitation of existing rental housing,
- 2. New construction of rental housing or single family homes, and
- 3. Acquisition and rehabilitation of existing housing for sale to homebuyers.

#### D. Location of Projects

CHDO's are eligible to apply for projects located in all parts of Nassau County.

**Attachment A**  
**Yearly Income Limits**

FY 2014 Median Family Income for Nassau & Suffolk Counties = \$105,100

2014  
**HUD INCOME LIMITS**  
Effective December 18, 2013

Median Income	HOUSEHOLD SIZE							
	1	2	3	4	5	6	7	8
30%	\$22,100	\$25,250	\$ 28,400	\$ 31,550	\$ 34,100	\$ 36,600	\$ 39,150	\$ 41,650
50%	\$36,800	\$42,050	\$ 47,300	\$ 52,550	\$ 56,800	\$ 61,000	\$ 65,200	\$ 69,400
60%	\$44,140	\$50,450	\$ 56,750	\$ 63,060	\$ 68,100	\$ 73,150	\$ 78,190	\$ 83,240
80%	\$58,850	\$67,250	\$ 75,650	\$ 84,100	\$ 90,800	\$ 97,550	\$104,250	\$ 111,000
100%	\$73,600	\$84,100	\$ 94,600	\$105,100	\$ 113,600	\$122,000	\$130,400	\$ 138,800
120%	\$88,300	\$100,900	\$113,500	\$126,100	\$136,200	\$146,300	\$156,400	\$ 166,500
130%	\$95,650	\$109,300	\$122,950	\$136,650	\$147,550	\$158,500	\$169,400	\$ 180,350

**Attachment B**  
**Rent Limits**

**April 2013 HUD HOME Program Rent Limits**

	Efficiency/ Studio	1 BedRm	2 BedRms	3 BedRms	4 BedRms	5 Bedrms	6 BedRms
Low HOME Rent Limit	\$941	\$1008	\$1210	\$1397	\$1558	\$1720	\$1881
High HOME Rent Limit	\$1014	\$1199	\$1441	\$1656	\$1828	\$1998	\$2169
Fair Market Rent of MSA	\$1014	\$1285	\$1583	\$2058	\$2370	\$2726	\$3081

Source: <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/rent/2013/ny.pdf>

**Attachment C**  
**Utility Allowances**

Please contact the Nassau County Office of Community Development for the latest information on Allowances for Tenant-Furnished Utilities and Other Services.

**Attachment D  
Subsidy Limits**

**Maximum Statutory Mortgage Limits – 240% Maximum Limits  
Section 221 (d)(3) Limits for Nassau County, New York**

**Effective May 31, 2012**

<b># of Bedrooms</b>	<b>Non-Elevator Building</b>
0-Bed Rooms	\$ 132,813.60
1-Bed Rooms	\$ 152,251.20
2-Bed Rooms	\$ 185,136.00
3-Bed Rooms	\$ 239,505.60
4+-Bed Rooms	\$ 262,903.20

Source: <http://portal.hud.gov/hudportal/HUD?src=/states/california/working/cpd/2012-05-31>

## Attachment E

### **Davis-Bacon Act\***

#### **I. Statutory and regulatory provisions.**

#### **II. Determining applicability.**

#### **III. Scope of coverage.**

#### **IV. Homeownership projects.**

#### **V. Case studies.**

The National Affordable Housing Act of 1990 (NAHA) created the HOME Investment Partnerships Program (HOME), a housing development program with new language in the provision concerning Federal (Davis-Bacon) labor standards applicability. Guidance for HUD field staff and clients on the application of Davis-Bacon requirements to HOME projects was provided on a case-by-case basis until general policy decisions could be made and those policies could be tested against actual project proposals. We believe that sufficient experience has been gained to enable us to compile general guidance in this area for HUD staff and client use.

The following is provided with the cooperation and advice of the Community Planning and Development's Office of Affordable Housing and the Office of General Counsel.

#### ***I. Statutory and regulatory provisions.***

Federal (Davis-Bacon) wage requirements are made applicable to the HOME program by ***Section 286 of the NAHA*** which provides, in part, as follows:

"Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this subtitle shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act..., shall be paid to all laborers and mechanics employed in the development of affordable housing involved,...."

HUD regulations (***24 CFR 92.354***) paraphrase the statutory provision and clarify that the contract for construction must contain these wage provisions if HOME funds are used for any project costs, including construction or nonconstruction costs, for housing with 12 or more HOME-assisted units.

The regulations further explain that a construction contract that includes a total of 12 or more HOME-assisted units is covered by Davis-Bacon requirements even if the contract covers more than one HOME "project" and prohibits arranging multiple construction contracts within a single project for the purpose of avoiding Davis-Bacon coverage. Once triggered, the wage provisions

apply to the construction of the entire project - HOME-assisted and non-assisted portions, alike. The NAHA and program regulations also provide for the exclusion of certain **sweat equity** labor from Davis-Bacon coverage. Members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or toward rental payments are not subject to Davis-Bacon wage requirements. Additionally, **volunteers** may be employed in accordance with *24 CFR Part 70*.

The HOME labor standards provision is unlike labor standards clauses in other HUD programs. For example, the labor standards for Community Development Block Grants (CDBG) apply to *construction work financed in whole or in part* with the assistance received through CDBG and cover residential property only if the *property contains not less than 8 units*. For HOME, we are directed to "**construction contracts**" (not construction work or properties) where the standard is whether 12 or more of "units" covered by the contract are "**assisted**" (not whether construction work is directly financed). These differences serve both to focus the unit threshold window on the "contract" and to broaden the scope of coverage to construction and non-construction costs and assisted and non-assisted portions.

## **II. Unit Threshold.**

The Davis-Bacon "trigger" relates to the *number of HOME-assisted units contained in a construction contract*. It is important to recognize that the two (2) factors are: 1) the number of HOME units - there may be units which **are not** HOME-assisted in the contract; and 2) the scope of the construction contract - **not** the "project."

The number of HOME-assisted units is determined in accordance with guidance provided by the program office in *Notice CPD 94-12* (April 26, 1994). This determination is made by the participating jurisdiction (PJ), insular area or Indian tribe (referred to collectively as *recipients*) primarily for purposes other than labor standards applicability. The Offices of Labor Relations, General Counsel and CPD have agreed that the number of HOME-assisted units identified pursuant to this Notice is acceptable for Davis-Bacon unit threshold purposes. The number of assisted units within a specific project should be available from the recipient and is also reflected on HUD Form 40094, Homeownership Assistance/Rental Housing Project Set-Up Report. (*Note that the recipient determines the number of assisted units in a **project**, not a construction contract.*)

Once the number of HOME-assisted units is determined, the construction contract(s) must be identified. Each contract must then be considered for coverage based upon the number of HOME units contained in the contract: contracts with 12 or more HOME units are covered; contracts with 11 or less HOME units are not. Two important factors must be weighed in this determination:

- 1) **A HOME project can not be divided into multiple contracts to avoid Davis-Bacon coverage.** There may be other, legitimate reasons that a single project would be constructed with separate contracts that would each contain 11 or less HOME units and the contracts would not be covered. But it is not permissible to arrange multiple contracts solely to circumvent labor standards requirements.



2) A construction contract with 12 or more HOME-assisted units is covered even if the contract involves more than one HOME project. For example, if, for whatever reason, four projects each containing 4 HOME-assisted units are "pooled" into one construction contract, the contract would be covered.

**Special note on Group Home and Single Room Occupancy (SRO) projects:**

*Notice CPD 94-01* (January 4, 1994) defines group homes and SROs for HOME assistance purposes. A **group home** is usually a large single family residence consisting of common space such as kitchens, dining areas, living rooms and bathrooms, along with separate private or semi-private space (i.e., bedroom) for each occupant. An **SRO** consists of single room dwelling units that are the primary residences of its occupants, and may have shared common dining, sanitary and/or recreation facilities. Depending upon certain parameters established by the program office (*See Notice CPD 94-01*), PJs may choose to consider group homes as a single unit for HOME assistance purposes or may classify them as single room occupancy units. In the latter case, if the number of HOME-assisted SRO dwelling units covered by a contract for construction equals 12 or more, Davis-Bacon labor standards are applicable.

**III. Scope of coverage.**

It has been determined that applicability of Federal wage requirements is not affected by the specific use of HOME funding. That is, it does not matter whether HOME funds are used for construction or non-construction project costs; if the threshold is met then the labor standards provision is triggered. (*See also CPD Notice 92-19, dated June 9, 1992.*) This determination hinges in part on the difference between "assisted" and "financed" - "assisted" is a much broader term. In addition, under the statute Federal wage rates apply whenever a construction contract contains 12 or more *units* that are assisted, whether the *contract* is assisted or not. Housing units in a HOME project that are constructed with private funds may still be "assisted" by HOME even though the construction of the units is not directly "financed" by HOME.

It has also been determined that once triggered, the labor standards apply to the construction of the entire project. For example, if it were practical to funnel all of the HOME funds to the construction costs for a portion of a project it *would not* limit labor standards applicability to that HOME-funded portion. (*See also CPD Notice 94-12.*)

**IV. Homeownership projects.**

Some HOME projects are designed to provide homeownership opportunities to low-income families. These projects may not involve the use of HOME funds for the construction of the housing in any way but, for example, involve only down payment or mortgage assistance to the homebuyers.

Construction work for projects in which HOME funds are used only to assist homebuyers to acquire single family housing is not covered UNLESS there is an agreement with the owner or

developer of the housing in advance of the construction work that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more HOME-assisted units.

While the regulations prohibit creating multiple contracts within a single project to avoid Davis-Bacon coverage, *there is no prohibition against arranging multiple **projects*** within a development proposal. In other words, the regulations would not prohibit a PJ - which considers a developer's proposal to build a 100-unit single family HOME project - from establishing multiple "projects" (each with 11 or less HOME-assisted units) and the developer awarding a separate construction contract for each project. This arrangement would result in no Davis-Bacon coverage. **However**, if the developer grouped these "projects" under one construction contract so that the total number of HOME-assisted units contained in the contract is 12 or more, the work would be covered. The key is the number of HOME-assisted units contained in a contract for construction.

**3. a. Proposal** A developer, with a commitment from the PJ for HOME assistance, proposes to develop 40 single family units for homeownership. HOME funds combined with private funds will be used for site acquisition and to finance the construction of the units, which will be performed under one contract. Prospective homebuyers will execute real property sales contracts, presumably conveying ownership of the land, prior to the construction of the single family units. Each unit will be entered as a single project in the HUD cash management system (CM/I). The PJ asks for confirmation that executing sales contracts prior to construction and entering the units as separate "projects" in the CM/I database would not trigger Davis-Bacon requirements.

**b. Decision** The construction work will be covered. The two factors presented, ownership of the land and separate entry into the CM/I database, have no significant bearing on labor standards applicability. Davis-Bacon coverage will be triggered because the construction contract will contain 12 or more (40) HOME-assisted units.

**4. a. Proposal** A PJ requests guidance in relation to six (6) HOME projects totaling 22 units which will be owned and operated by one community based non-profit organization. All 6 projects, ranging from 2 to 4 units each, are in varying stages of processing and are being handled independent of each other with separate applications, loans and construction contracts. However, due to an approaching financing commitment deadline, all six projects were entered into the CM/I system on the same date.

**b. Decision** Davis-Bacon wage requirements would not apply to these projects. None of the contracts for construction will contain 12 or more HOME units. The date of entry into the CM/I system has no bearing on Davis-Bacon applicability.

**5. a. Proposal** The project involves the construction of 15 units in two buildings (9 units in one building; 6 in the other) on contiguous lots. A combination of HOME funds, low-income tax credits and developer equity are financing the project. Construction of both buildings was begun under one contract using Davis-Bacon wage rates. Disputes between the owner/developer and the contractor led to work stoppage and ultimately the contractor was dismissed. With both buildings only partially completed, the tax credit contributions

were in jeopardy unless completed and occupied units were delivered quickly. In order to secure the tax credits, the PJ and developer propose to contract for completion of one building and then contract for the completion of the second building. The same contractor would be used for both buildings but the contract for the second building would be executed only after successful completion of the first.

**b. *Decision*** Davis-Bacon wage requirements would not apply to the construction of these buildings. Neither of the contracts for construction will contain 12 or more HOME-assisted units and it appears that the division of the project into multiple contracts is intended to expedite progress for tax credit benefits and not to avoid Davis-Bacon coverage.

**6. a. *Proposal*** A developer proposes to construct a multifamily project with 2 buildings of 8 HOME-assisted units each. HOME funds will be used for site acquisition and certain "soft costs" such as site surveys and architectural drawings. The construction work will be performed under one contract. No HOME funds will be used for the construction of the units.

**b. *Decision*** The construction of the project is covered. Unlike the CDBG program, the HOME labor standards provision is triggered whether HOME funds are used for construction or non-construction project costs. Since the construction contract will contain 12 or more HOME-assisted units, Davis-Bacon rates will apply.

**7. a. *Proposal*** The project involves the new construction of a 14-unit HOME (single family homeowner) subdivision. CDBG and HOME funds will finance site improvements for the subdivision. The improvements will be performed under one contract and constructed only within the boundaries of the subdivision site. The improved site/housing lots will be turned over to three (3) community housing development organizations (CHODOs). The CHODOs will contract for the construction of the individual housing units separately and will have no more than two lots in their control at any time. The remaining lots will be made available to the CHODOs as construction of the units is completed.

**b. *Decision*** The site improvements contract will be covered and the contracts for the housing construction will not. The question here is not so much coverage but what kind of wage decision is applicable. For Davis-Bacon purposes we can view the site improvements and housing construction as a single development since the purpose of the site improvements is solely to support the construction of single family residences. In this case the site improvements are "incidental" to the housing construction and therefore would be subject to a residential wage schedule.

**\*Any questions concerning this *Letter* may be directed to the Office of Labor Relations at (202)708-0370 or, in the case of HUD program participants, to the HUD Field Labor Relations Staff with jurisdiction for your area.**

## **Attachment F**

### **The Contract Work Hours and Safety Standards Act (CWHSSA)**

#### **OVERVIEW**

The Contract Work Hours and Safety Standards Act (CWHSSA) applies to federal service contracts and federal and federally assisted construction contracts over \$100,000. It requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. This Act also prohibits unsanitary, hazardous, or dangerous working conditions on federal and federally financed and assisted construction projects.

The Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements.

Source: <http://www.dol.gov/compliance/laws/comp-cwhssa.htm>

## Attachment H

### **ANNUAL SECTION 3 SUMMARY REPORTING REQUIREMENTS FOR RECIPIENTS OF HUD COMMUNITY PLANNING & DEVELOPMENT FUNDING \*TECHNICAL ASSISTANCE ON FORM HUD-60002**

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#### **Why HUD Enforces Section 3?**

Each year the U.S. Department of Housing and Urban Development invests billions of federal dollars into distressed communities for projects designed to build and rehabilitate housing, improve roads, develop community centers, and otherwise assist families achieve the American Dream.

The Section 3 regulation recognizes that HUD funding typically results in projects/activities that generate new employment, training and contracting opportunities. These economic opportunities not only provide “bricks and mortar”, but can also positively impact the lives of local residents who live in the neighborhoods being redeveloped.

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] is HUD’s legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects.

Further, as a condition of receiving HUD Community Planning and Development assistance, recipients certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b). Accordingly, the Department has the legal responsibility to monitor recipients for compliance and can impose penalties upon those that fail to meet these obligations.

#### **Applicability of Section 3 to Community Planning & Development Assistance**

The requirements of Section 3 apply to recipients of HUD Community Planning and Development funding exceeding **\$200,000**.

Section 3 covered projects are those in which a *combined* (or aggregate) amount of covered funding exceeding \$200,000, is invested into activities involving **housing construction, demolition, rehabilitation, or other public construction—i.e., roads, sewers, community centers, etc.**

[Example: Section 3 applies to the combined investment of more than \$200,000 into multiple single-family housing rehabilitation projects during a program year].

Contractors or subcontractors that receive contracts in excess of **\$100,000** for Section 3 covered projects/activities are required to comply with the Section 3 regulations in the same manner as direct recipients.

If the recipient agency receives Section 3 covered funding and invests these funds into covered projects/activities, but no individual contract exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient.

Accordingly, the recipient must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by: 1) Awarding 10 percent of the total dollar amount of all covered construction contracts to Section 3 businesses; and 2) Offering 30 percent of new employment opportunities to Section 3 businesses.

### **Section 3 Covered Community Planning and Development funding**

- ☐ Community Development Block Grants (CDBG)
- ☐ Home Investment Partnership Assistance
- ☐ Housing Opportunities for Persons with Aids (HOPWA)
- ☐ Economic Development Initiative (EDI)
- ☐ Brownfield Economic Development Initiative (BEDI)
- ☐ Emergency Shelter Grants
- ☐ Homeless Assistance
- ☐ University Partnership Grants
- ☐ Neighborhood Stimulus Program (NSP)
- ☐ Certain Grants Awarded Under HUD Notices of Funding Availability (NOFAs)

\*NOTE: The requirements of Section 3 only apply to the portion(s) of covered funding that were used for project/activities involving housing construction, rehabilitation, demolition, or other public construction. Section 3 applies to the **entire** covered project or activity regardless of whether the activity was fully or partially funded with covered assistance.

### **Section 3 Covered Recipient Agencies**

“Recipient” refers to any entity that receives Section 3 covered financial assistance directly from HUD or from another recipient and includes, but is not limited to any of the following:

- ☐ States; Units of Local Government; Native American Tribes; or other Public Bodies
- ☐ Public or Private Nonprofit Organizations
- ☐ Private Agencies or Institutions
- ☐ Mortgagors; Developers; Limited Dividend Sponsors; Builders; Property Managers; Community Housing Development Organizations
- ☐ Successors, assignees or transferees of any such entity listed above

☐ Recipients do **NOT** include any ultimate beneficiary under the HUD program that Section 3 applies and does **NOT** refer to contractors.

### **Triggering the Requirements of Section 3**

Section 3 is triggered when the normal completion of construction and rehabilitation projects creates the need for **new** employment, contracting, or training opportunities.

The Section 3 regulations should not be construed to mean that recipients are required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities.

If the expenditure of covered funding does not result in new employment, contracting, or training opportunities, the requirements of Section 3 have not been triggered. However, each agency must still submit Section 3 annual reports indicating this information.

### **Recipient Responsibilities Pursuant to Section 3**

Each recipient (and their covered contractors, subcontractors, or subrecipients) are required to comply with the requirements of Section 3 for *new* employment, training, or contracting opportunities resulting from the expenditure of covered funding. This responsibility includes:

1. Implementing procedures to notify Section 3 residents and business concerns about training, employment, and contracting opportunities generated by Section 3 covered assistance;
2. Notifying potential contractors working on Section 3 covered projects of their responsibilities;
3. Incorporating the Section 3 Clause into all covered solicitations and contracts [see 24 CFR Part 135.38];
4. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns;
5. Assisting and actively cooperating with the Department in making contractors and subcontractors comply;
6. Refraining from entering into contracts with contractors that are in violation of Section 3 regulations;
7. Documenting actions taken to comply with Section 3; and
8. Submitting Section 3 Annual Summary Reports (form HUD-60002) in accordance with 24 CFR Part 135.90.

In addition to the responsibilities described above, **State and County agencies or consortia** that distribute covered funds to units of local government, nonprofit organizations, or other subrecipients, must attempt to reach the minimum numerical goals set forth at 24 CFR Part 135.30, regardless of the number of subrecipients that receive covered funding. State or County agencies must also do the following:

1. Inform subrecipients about the requirements of Section 3;
2. Assist subrecipients and their contractors with achieving compliance;
3. Monitor subrecipients' performance with respect to meeting the requirements of Section 3; and
4. Report to HUD on the cumulative Section 3 activities taking place within their jurisdiction on an annual basis.

### **Section 3 Residents and Business Concerns**

#### **Section 3 Residents Are:**

1. Residents of Public and Indian Housing; or
2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

#### **Section 3 Business Concerns Are One of the Following:**

1. Businesses that are 51 percent or more owned by Section 3 residents;
2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above.

Recipients can use their discretion for determining the type of verification that is required by prospective Section 3 residents and business concerns. Some examples include: proof of residency in a public housing authority; proof of federal subsidies for housing, food stamps, or unemployment benefits; and payroll data or other relevant business information.

#### **Section 3 Summary Reports (Form HUD-60002)**

Annually, each direct recipient of Community Planning and Development funding is required to submit form HUD-60002 to HUD's Economic Opportunity Division in Washington, DC., preferably online from the following website: [www.hud.gov/section3](http://www.hud.gov/section3).

#### **Due Date: Form HUD-60002 is due at the same time as annual performance (e.g., CAPERS) reports**

The Section 3 Summary Report shall follow the same program, fiscal, or calendar year as the annual performance report and should correspond to the covered projects and activities that were administered during the reporting period.

**NOTE: Section 3 reports must be submitted by all agencies that receive Community Planning and Development funding in excess of \$200,000 whether the requirements were triggered or not.**

#### **Determining What Should Be Reported on Form HUD-60002**

Section 3 Annual Summary Reports are intended to measure each recipient's efforts to comply with the statutory and regulatory requirements of Section 3 in its own operations **AND** those of its covered



contractors, subcontractors, and subrecipients. Each submission of form HUD-60002 should indicate the following:

- ☐ The total dollar amount of HUD funding that was received by the recipient for covered projects/activities during the specified reporting period.
- ☐ The total number of new employees that were hired by the recipient and/or its covered contractors, subcontractors, and subrecipients, as a result of performing or completing covered project/activities.
- ☐ The number of new employees that were hired by the recipient (or its covered contractors, subcontractors, and subrecipients), as a result of covered projects/activities, that met the definition of a Section 3 resident.
- ☐ The total number of man hours worked on covered projects (optional).
- ☐ The aggregate number of hours worked by Section 3 residents on covered projects (optional).
- ☐ The total number of Section 3 residents that participated in training opportunities that were made available by the recipient agency, its contractors, subrecipients, or other local community resource agencies.
- ☐ The total dollar amount of construction and/or non-construction contracts (or subcontracts) that were awarded with covered funding.
- ☐ The dollar amount of the recipient's construction or non-construction contracts (or subcontracts) that were awarded to Section 3 business concerns.
- ☐ Detailed narrative descriptions of the specific actions that were taken by the recipient (or its covered contractors, subcontractors, subrecipients, or others) to comply with the requirements of Section 3 and/or meet the minimum numerical goals for employment and contracting opportunities.

### **Section 3 Reporting and Compliance Determinations**

Absent evidence to the contrary, the Department considers recipients of covered funding to be in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 CFR Part 135.30. Specifically:

- a. 30 percent of the aggregate number of new hires shall be Section 3 residents;
- b. 10 percent of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
- c. 3 percent of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

**Recipients that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so.** Such justifications should describe the efforts that

were taken, barriers encountered, and other relevant information that will enable the Department to make a compliance determination.

Recipients that submit Section 3 reports containing **all zeros**, without a sufficient explanation to justify their submission, are in **noncompliance** with the requirements of Section 3.

Failure to comply with the requirements of Section 3 may result in sanctions, including: debarment, suspension, or limited denial of participation in HUD programs pursuant to 24 CFR Part 24.

Recipients that are subject to annual A-133 Audits may also receive an audit finding for failure to submit form HUD-60002 to HUD.

### **Important Notes for Submitting Form HUD-60002**

Recipients must submit a separate form HUD-60002 for each type of covered funding (*e.g.*, separate reports must be submitted for CDBG and HOME funding).

Use the online Section 3 Summary Reporting System at: [www.hud.gov/section3](http://www.hud.gov/section3) to ensure that form HUD- 60002 is received by the Economic Opportunity Division in HUD Headquarters in a timely manner.

The “reporting period” option in the online Section 3 Summary Reporting System (box #7) lists quarters but the Section 3 reporting is an annual requirement. Accordingly, recipients should select **Quarter 4** to document the total amount of covered activities/projects that were completed during the entire reporting period.

If the recipient (or its covered contractors, subcontractors and subrecipients) did not hire any new employees during the reporting period, and/or if no covered construction or non-construction contracts were awarded, the recipient must indicate this in Part III of form HUD-60002 and certify that this information is true and accurate by penalty of law.

### **Where Are Reports Submitted**

Form HUD-60002 must be submitted to HUD’s Economic Opportunity Division, in Washington, DC. Recipients are strongly encouraged to submit form HUD-60002 online at: [www.hud.gov/section3](http://www.hud.gov/section3). Recipients can also download a hard copy of form-HUD 60002 from the website listed above. Hard copies shall be submitted via fax or mail to:

U.S. Department of Housing and Urban Development

Attn: Economic Opportunity Division

451 Seventh Street, SW

Room 5235

Washington, DC 20410

202-708-1286 (fax)

### **Additional Section 3 Guidance and Technical Assistance**

The Economic Opportunity Division is committed to providing recipient’s guidance and technical assistance for compliance with the requirements of Section 3.

For additional information, please visit the Section 3 website at: [www.hud.gov/section3](http://www.hud.gov/section3). This webpage provides the following tools and information:

☐ Section 3 Statute—12 U.S.C. 1701u

- ☐ Section 3 Regulation—24 CFR Part 135
- ☐ Frequently Asked Questions
- ☐ Section 3 Model Programs
- ☐ Guidance on Section 3 and Economic Stimulus Funding
- ☐ Guidance on Section 3 and the Neighborhood Stimulus Program (NSP)
- ☐ Sample Section 3 Certification Forms (residents and business concerns)
- ☐ Link to HUD’s Local Income Eligibility Calculator
- ☐ Link to Section 3 Annual Reporting System (form HUD-60002)
- ☐ Downloadable Forms
- ☐ Contact Information for Economic Opportunity Division staff
- ☐ Email inquiries on Section 3 can be sent to [section3@hud.gov](mailto:section3@hud.gov)